

Members of the Association of Washington Business (AWB) appreciate the opportunity to provide comments on the proposed NPDES Industrial Stormwater General Permit, dated March 29, 2002. AWB also appreciates the efforts by the Department in revising earlier drafts based on the comments and concerns expressed by AWB and member companies. Despite these efforts however, there are serious legal, technical and policy issues that need to be resolved prior to adoption of the final general permit.

## I. GENERAL COMMENTS

The following comments have been developed by a broad base of AWB members whose facilities must comply with the terms and conditions of the industrial stormwater general permit. A predominant concern expressed by many AWB members, are the costs that will be associated with implementing new sampling, monitoring, reporting and compliance requirements contained in the proposed permit. If adopted, the draft permit will also inevitably increase costs and workload to the department, as facilities choose to apply for coverage under an individual stormwater permit, instead of the industrial stormwater general permit.

A number of key components are missing from the draft permit and/or need to be expanded further. A common concern expressed by our members is the lack of flexibility provided to permittees in complying with various permit conditions. Some permittees have stated that they will find it impossible to comply with certain provisions of the draft permit. Stormwater by its very nature is intermittent and often unpredictable - both in its frequency and also in its content. Ecology should adhere to common sense policies that allow for the greatest degree of flexibility for permit holders attempting to comply with permit conditions. Flexible permitting strategies can provide a reasonable balance between protecting the environment and the costs necessary for that protection. Allowing an adequate dilution, or mixing zone is paramount and consistent with state and federal law. AWB members generally feel that setting specific effluent limits based on state water quality standards for discharges to 303(d) listed waterbodies is not appropriate, nor consistent with state and federal law. These issues and additional points are further explained in the comments contained herein.

Individual members of AWB such as Boeing, Weyerhaeuser, Northwest Pulp & Paper, Boise Cascade, Kennedy/Jenks Consultants, PACAAR, Parametrics Consulting and other member companies and associations will be submitting comments addressing specific concerns. AWB supports these comments and encourages the department to accept those suggestions in their entirety.

## II. INDUSTRIAL STORMWATER GENERAL PERMIT GOALS

Ecology should embrace a number of key goals in developing the industrial stormwater general permit. The general permit is intended to provide coverage

for a large number of industrial facilities as a cost-effective alternative for both Ecology and the permittee to applying for and issuing an individual stormwater permit. As compliance with the general permit becomes more costly, complex and confusing, businesses will choose to apply for coverage under an individual permit, adding more overhead costs to the department. The permit should be written so that it accomplishes the following goals:

1. The Permit Should Be Consistent With State And Federal Laws And Regulations. The draft permit falls short of this goal in a number of key areas.

A. There are no state or federal laws requiring compliance with water quality standards at the point of discharge for stormwater. However, sections S3.D.1 and 2 set a new precedent by going above and beyond current state and federal laws and erroneously trump the TMDL process and future effluent limits not yet defined by a TMDL. AWB recommends Ecology re-write this section and instead rely on an expanded benchmark system (consistent with EPA's MSGP and further explained in comments below) and the state TMDL program which takes into consideration the nature of stormwater and allows for both point and non-point source control.

B. Ecology is creating new regulations regarding mixing zones inconsistent with state law, and circumventing the rule making process. S3.E describes the applicability and size of mixing zones and what requirements are necessary for a permittee to be granted a mixing zone. This section of the draft permit is particularly troubling for AWB members. State and federal law clearly authorizes the availability of mixing zones and these laws have consistently been upheld in various judicial decisions. EPA has also maintained that mixing zones are necessary in managing the peculiar and difficult nature of stormwater. It is confusing as to why the state is suggesting differently. Ecology should instead, adhere to current state and federal law. WAC 173-201A-100 specifically spells out the state policy regarding mixing zones which should be followed. Guidance documents, such as Ecology's Permit Writers Manual, are not equivalent to state laws and regulations and permittees should not be forced to abide by policies based on Ecology staff interpretations of guidance documents. Unless and until state law is amended, or Ecology feels compelled to promulgate rules on this subject, the industrial stormwater general permit should be consistent with state law addressing mixing zones.

2. The Permit Should Provide Ample Flexibility To Facilities In Determining How To Best Manage Stormwater Discharges. Stormwater is an unpredictable, inconsistent and an intermittent event, influenced by many factors, including those beyond the control of a permitted facility. The following suggestions should be incorporated into the draft permit to help accomplish the above stated goal.

A. Demanding compliance with state water quality standards intended for point sources or 'direct discharges' is not appropriate. State water quality standards as applied in the draft permit should not be used to determine the impact of stormwater on the receiving water, nor should they be used to conclusively decide whether a permittee must install additional control technologies to improve the quality of effluent. AWB concurs with comments submitted by member companies suggesting that provisions in the draft permit inconsistent with the nature of stormwater discharge, be modified or eliminated.

B. Ecology should follow the lead and example of EPA's Multi Sector General Permit (MSGP), which recognizes the problems associated with using water quality standards to determine stormwater effluent limits. This understanding has led EPA to conclude that 'benchmarks' allow facilities greater flexibility in managing stormwater and to allow the states in delegated programs to decide how to demonstrate compliance with applicable standards.

C. The compliance schedule for existing facilities (S3.D.2) with effluent limits based on discharging to a 303(d) listed waterbody should provide a means for a facility to disengage if sampling data indicates that additional BMPs, including source controls or treatment options are not necessary. Take for example the following scenario: Under the proposed compliance schedule, if a facility discharging to a listed waterbody, samples its discharge in the first quarter of 2003 and finds that the effluent limit based on a parameter defined in a TMDL is exceeded, the multi-year compliance schedule becomes effective. Under the compliance schedule defined in the proposed permit, the facility would then be required to identify the source of the pollutant and treatment options within one year of the exceedance. Within two years of the exceedance, the facility would be required to implement nonstructural source controls and within year three, structural source controls would be required. Additional actions must be taken in years four and five. What happens if during the first year, subsequent testing reveals that the one sample taken in the first quarter was not representative of the discharge and subsequent testing and data reveals that for the next 'x' number of quarters, the effluent is within the defined limits? Under this scenario, facilities would seemingly be required to install expensive and unwarranted source control technology. Additionally BMPs and other steps taken to address compliance with the effluent limit in any of the following years might have addressed the cause the exceedance and no further control actions would be needed. AWB members assume that this is an oversight on the part of the agency and recommends that the draft permit be re-written to allow an appropriate compliance schedule disengagement mechanism. This example further illustrates why requiring strict compliance with state water quality

standards for stormwater discharges is not appropriate and why additional flexibility is needed in the draft permit in order to effectively and fairly manage stormwater.

D. The compliance schedule should allow additional time to implement BMPs under the compliance schedule. Although the compliance schedule is appreciated, the twelve month intervals between required implementation of BMPs is too short. Facilities need additional time to monitor, measure the effectiveness of BMPs and demonstrate compliance with permit conditions. Since eight consecutive quarterly samples must show compliance before monitoring can be suspended, two years should be allowed between each interim compliance date. The Fact sheet should acknowledge that the TMDL will be and should be the primary vehicle for setting effluent limits for all sources including stormwater. Ecology should not make the TMDL irrelevant by imposing limits on stormwater ahead of other contributing sources.

E. The permit should acknowledge that effluent limits for TMDL listed pollutants cannot be established for many chemistries found in the water column. Alternative testing methods such as whole effluent toxicity should be allowed to demonstrate they do not present a reasonable potential to pollute or violate the intent of the Water quality standards. The permit should clearly state that if an effluent limit cannot be set, the permittee will not be considered to be out of compliance with the permit since it would be impossible to demonstrate compliance.

F. Monitoring and sampling requirements as defined in S4 are overly restrictive and necessitate additional flexibility. Ecology's not requiring sampling outside of 'normal business hours' is appreciated, however some businesses operate '24/7' and normal business hours may literally be around-the-clock. Ecology should limit sampling requirements to 'normal daylight hours'. Additional safety considerations such lighting, other adverse weather conditions and potentially hazardous weather event conditions should exempt a facility from having to perform a sampling that storm event, even if it is the only qualifying event of the quarter. Requiring grab-sample to be taken within the first hour of a storm event does not necessarily identify the periods of highest pollutant discharge concentrations. Collection of a sample should be allowed up to 3 hour after a storm event qualifies and sampling frequency should be in years two and four. Additional monitoring and other compliance requirements should not be based on any small subset of these sampling values.

3. The Permit Should Provide Reasonable Protection To The Environment While Minimizing Costs. As described above, the draft permit imposes many new requirements for businesses covered under the industrial stormwater general permit. Additional monitoring, sampling, reporting and compliance requirements

should be examined in order to assess their financial impacts to business and environmental gain. The fundamental concept of 'cost/benefit' should be applied throughout the industrial stormwater general permit.

Thank you for the opportunity to provide these comments and for taking them into consideration in further revising the draft industrial stormwater general permit.